

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

MID-WEST TELEPHONE SERVICE, INC.

and

CASE 8-CA-38901

WILFREDO PLACERES, AN INDIVIDUAL

MID-WEST TELEPHONE SERVICE, INC.

and

CASE 8-CA-39168

DUSTIN PORTER, AN INDIVIDUAL

MID-WEST TELEPHONE SERVICE, INC.

and

**CASES 8-CA-39297
8-CA-39388**

BEN FANNIN, AN INDIVIDUAL

MID-WEST TELEPHONE SERVICE, INC.

and

CASE 8-CA-39334

MIKE WILLIAMS, AN INDIVIDUAL

**RESPONDENT MIDWEST TELEPHONE SERVICES, INC.'S
MOTION FOR PARTIAL RECONSIDERATION**

MORROW & MEYER, LLC.

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Pursuant to 29 C.F.R. 102.48(d)(1) and (2) Respondent, Midwest Telephone Services, Inc., (“Midwest Telephone”) hereby moves for partial reconsideration of the Board’s September 21, 2012 Order. In that Order, the Board concluded that “[n]o exceptions were filed to the Judge’s findings that the Respondent violated . . . Sec. 8(a)(4) by discharging employee Ben Fannin.”

As is more fully explained in the attached Memorandum in Support, the Board’s conclusion in this regard is in error. Exception was taken by Midwest Telephone to the ALJ’s conclusion that Ben Fannin was terminated in violation of 8(a)(4). (*See e.g.*, Respondent’s Brief in Support at pg. 16) (“For the foregoing reasons, Midwest Telephone respectfully requests that the Board reverse the ALJ’s findings that the Acting General Counsel established a prima facie case under *Wright Line* that MWTS: . . . (2) discharged Ben Fannin in violation of Section 8(a)(1), 8(a)(3) and 8(a)(4).”); (*See also*, Answering Brief at page 10) (“In consideration of the above and the record as a whole, the ALJ correctly drew the reasonable conclusion that Respondent gained knowledge of Fannin’s and Williams’ Section 7 activities. Therefore, the ALJ also correctly concluded, using a *Wright Line* analysis, that Respondent violated Section 8(a)(1), (3) and (4) when it terminated Fannin....)(*See also*, Reply Brief at n. 2) (“The ALJ also makes a casual reference that Fannin’s filing of an unfair labor practice charge [w]as a potential reason for the termination decision, but the record is devoid of any evidence that George Vaughn, Jr. or MWTS bore any animus as a result of Fannin filing an unfair labor practice charge. Indeed, as indicated above, MWTS brought Fannin back after the charge was filed and continued to employ him until he told George Vaughn, Jr. to “go fuck himself.”)

Extraordinary circumstances exist for this Motion. The Board’s failure to review Midwest Telephone’s 8(a)(4) exceptions, which were clearly raised in the briefs of both parties,

may impact Midwest's Telephone's ability to seek review of the Board's decision by an appropriate appellate court.

WHEREFORE, Midwest Telephone respectfully requests reconsideration and modification of the Board's September 21, 2012 order to: (1) reflect that Respondent filed an exception to the ALJ's finding that Respondent violated Section 8(a)(4), 8(a)(3) and 8(a)(1) by terminating Ben Fannin; and, (2) reflect the Board's decision based on the record regarding whether Respondent violated Section 8(a)(4) by terminating Ben Fannin.

Respectfully Submitted,

MORROW & MEYER, LLC.

/s/Hans A. Nilges

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Respondent's Motion for Partial Reconsideration as sent this 19th day of October, 2012 to the following via e-mail and regular mail to:

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/s/Hans A. Nilges
Hans A. Nilges

Mid-West - NLRB Charge - Motion for Partial Reconsideration 10-19-12